

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Warren E. Kaari,

Complainant,

v.

Barbara Johnson,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS
AND ORDER**

The above-entitled matter came on for an evidentiary hearing on January 26, 2010, before a panel of three Administrative Law Judges: Eric L. Lipman (Presiding Judge), Bruce H. Johnson and William Johnson. Following the receipt of post-hearing submissions from the parties, the hearing record closed on February 16, 2010.

Warren E. Kaari (Complainant) appeared on his own behalf without counsel.

Corey J. Ayling, McGrann Shea Carnival Straughn & Lamb, Chartered, appeared on behalf of Barbara Johnson (Respondent).

STATEMENT OF ISSUE

Did Respondent Barbara Johnson violate Minnesota Statute § 211B.12 by converting to personal uses money that had been earlier contributed to her political committee?

The panel concludes that the Complainant has established by a preponderance of the evidence that Respondent did violate Minn. Stat. § 211B.12.

Based upon the entire record, the panel makes the following:

FINDINGS OF FACT

1. The Complainant, Warren Kaari, is a resident of the Fourth Ward of the City of Minneapolis. The Fourth Ward is located in the northwest corner of the City and includes the Shingle Creek, Lind-Bohanon, Victory, Webber-Camden, Cleveland, Folwell and Jordan neighborhoods.¹

¹ See *generally*, Testimony of Barbara Johnson.

2. The Respondent, Barbara Johnson, is a current member of the Minneapolis City Council and serves as the Council's President. Ms. Johnson represents the City's Fourth Ward on the Council.²

3. Ms. Johnson was first elected to the Minneapolis City Council in 1997. Members of the Minneapolis City Council serve four-year terms. Ms. Johnson was re-elected to the City Council from the Fourth Ward in 2001 and 2005.³

4. Ms. Johnson uses the internet to communicate with her constituents by way of electronic mail. She has access to the internet at her Minneapolis home and her cabin in Tower, Minnesota.⁴

5. Because Ms. Johnson regards cellular telephone reception in the area of her cabin in Tower as unreliable, she has standard land-line telephone service provided to her cabin.⁵

6. Ms. Johnson subscribes to cable television. She regularly watches the coverage of state legislative sessions and the Hennepin County Board of Commissioners meetings. She likewise watches Minneapolis City Council Committee meetings that she is unable to attend in person.⁶

7. The Dunkers Club is a civic organization that promotes economic development in Minneapolis and St. Paul. Members are invited to join and are drawn from local business and community leaders. The annual membership fee is \$300.⁷

8. Ms. Johnson is a member of "Triple-A" (AAA), a not-for-profit automobile service organization. The AAA Plus membership that Ms. Johnson obtained provided roadside assistance coverage for both her car and her husband's sports utility vehicle (SUV).⁸ On occasion, Ms. Johnson has used her husband's SUV to transport tables, chairs and lawn signs for campaign events.⁹

² *Id.*

³ *Id.*

⁴ Testimony of B. Johnson; Ex. 16.

⁵ Ex. 15; Test. of B. Johnson.

⁶ Test. of B. Johnson.

⁷ Test. of B. Johnson.

⁸ Test. of B. Johnson.

⁹ Test. of B. Johnson.

9. Ms. Johnson's appearance, and in particular her hairstyle, has been the subject of comment by the local media.¹⁰ As a result of sometimes pointed critiques, Ms. Johnson now makes a greater effort to look her best in public. Mindful of the press commentary, her practice is to schedule hair cuts and hair coloring sessions on a more regular basis.¹¹

10. Because Ms. Johnson was not a candidate on the ballot in calendar year 2008, her campaign committee was only required to file a single, annual campaign finance report of receipts and expenditures.¹²

11. This annual report was due on Monday, February 2, 2009.¹³

12. On February 3, 2009, Ms. Johnson's campaign committee filed its 2008 Annual Campaign Finance Report. The report itemized the total contributions received and the expenditures that her committee made during calendar year 2008. Among others, the committee listed the following expenditures in this report:

\$1,219.85 to Comcast for internet and cable television service provided to Ms. Johnson's home in North Minneapolis.¹⁴

\$1,345.42 to Qwest for cell phone, land line, and fax services.¹⁵

\$1,030.53 to Frontier Communications for internet, telephone and fax service provided to Ms. Johnson's family cabin in Tower, Minnesota.

\$475 to Jackie Ann's Salon for Ms. Johnson's hair styling services.¹⁶

\$367.38 to Genies Magic Cleaners for dry-cleaning services.¹⁷

\$300 membership fee to the Twin Cities Dunkers Club.¹⁸

¹⁰ Ex. 13, *City Pages*, January 14, 2004, at 15 (The article, entitled "Meet Barb Johnson: the most powerful politician in Minnesota," described Ms. Johnson as having a "quasi-bouffant hairstyle that would not have been out of place 50 years ago.")

¹¹ Test. of B. Johnson.

¹² See Minn. Stat. § 211A.02, subd. 1.

¹³ See *id.* January 31, 2009 was a Saturday.

¹⁴ Ex. 4 (Schedule B, p. 4).

¹⁵ Ex. 4 (Schedule B, p. 4).

¹⁶ Ex. 4 (Schedule B, p. 4).

¹⁷ Ex. 4 (Schedule B, p. 4).

¹⁸ Ex. 4, (Schedule B, p. 4).

\$123.85 to the American Automobile Association (AAA) for roadside assistance coverage.¹⁹

13. Ms. Johnson was a candidate for re-election and her name appeared on the ballot in November 2009. Accordingly, her campaign committee was required to file campaign finance reports ten days before the primary and ten days before the general election.²⁰

14. On September 10, 2009, Ms. Johnson's campaign committee filed a campaign finance report for the reporting period January 1, 2009 through September 1, 2009. In this report, the committee listed the following expenditures:

\$270.00 to Jackie Ann's Salon for hair care services for photo opportunities and fundraiser.²¹

\$199.20 to Genies Magic Cleaners for dry-cleaning services.²²

\$785.01 to Comcast for internet and cable television services.²³

\$1,100 to Ms. Johnson to reimburse her for "campaign expenses."²⁴

\$500 to Ms. Johnson's son-in-law, Jeff Piper, for bartending at campaign fundraisers on May 15 and 25, 2009.²⁵

\$376 to the Northside Arts Collection for membership and catalogs.²⁶

15. At the March 2009 DFL Party endorsing convention, Ms. Johnson and three other candidates vied for the DFL Party endorsement for the council seat from the Fourth Ward in Minneapolis. While Ms. Johnson won the party endorsement in March, one of the opponents from that contest decided to remain in the race through the fall balloting.²⁷

¹⁹ Ex. 4 (Schedule B, p. 4); Ex. S.

²⁰ See, Minn. Stat. § 211A.02, subd. 1.

²¹ Ex. 2 (Schedule B p. 4).

²² Ex. 2 (Schedule B, p.4).

²³ Ex. 2 (Schedule B, p. 4).

²⁴ Ex. 2 (Schedule B, p. 4).

²⁵ Ex. 2 (Schedule B, p. 4).

²⁶ Ex. 2. (Schedule B, p. 4); Ex. 20.

²⁷ Testimony of B. Johnson.

16. Ms. Johnson's campaigning included appearing at community, social and fundraising events, and organizing volunteers to door-knock and drop campaign literature at the homes of her constituents.²⁸

17. In her September 10, 2009 report, Ms. Johnson disclosed that she had been reimbursed \$1,100 for food and beverages (pizza, doughnuts, and soft drinks) that she had purchased and served to campaign volunteers who worked on her behalf at the March DFL convention and during the summer that preceded the election.²⁹

18. On one occasion, when Ms. Johnson was campaigning at a neighborhood ice cream social, she spilled chocolate sauce on her silk blouse. Ms. Johnson charged the costs associated with dry cleaning her blouse to her campaign.³⁰

19. On several occasions in 2009, Ms. Johnson paid for dry cleaning services without seeking reimbursement from her campaign fund.³¹

20. The September 10, 2009 campaign finance report listed a \$500 payment in favor of Mr. Jeff Piper, the Councilwoman's son-in-law. The disbursement includes wages for bartending services rendered at more than one fundraising events during 2009, at a rate of \$25 per hour, and reimbursement for the expenses associated with purchase of the beer and wine served at those events.³²

21. The Northside Arts Collection is a non-profit organization that serves and promotes artists and arts organizations living and working in the north side neighborhoods of Minneapolis.³³

22. Ms. Johnson included a copy of the Northside Arts Collection catalog (along with other North Minneapolis promotional information) in a packet of information that she gave to delegates at the DFL endorsing convention. The \$376 payment to the Northside Arts Collection included the cost of purchasing copies of the catalog.³⁴

23. In her campaign committee's Campaign Finance Report filed on October 29, 2009, for the reporting period September 2, 2009 through October 20, 2009. Ms. Johnson's campaign committee reported an additional expenditure of \$337.05 for internet and cable television service from Comcast; an expenditure of \$39.16 for dry-cleaning services; and an expenditure of \$99.00 for hair styling services.³⁵

²⁸ Test. of B. Johnson.

²⁹ Test. of B. Johnson.

³⁰ Testimony of B. Johnson.

³¹ Test. of B. Johnson; Exs. 14C – 14F.

³² Test. of B. Johnson.

³³ Ex. 20.

³⁴ Test. of B. Johnson; Ex. 20.

³⁵ Ex. 3 (Schedule B, p. 4).

24. In that same Campaign Finance Report filed October 29, 2009, Ms. Johnson's campaign committee reported an expenditure of \$229.20 for cellular telephone expenses.³⁶

25. In addition to their salary, members of the Minneapolis City Council are given an annual "ward budget" to cover costs associated with running their offices. In 2009, the annual ward budget for each Council member was approximately \$11,000. Under the City Council Ward Budget Guidelines, computer software and hardware, cell phone charges, postage, printing, car allowance, and mileage reimbursement are permitted ward budget expenditures.³⁷

26. Ms. Johnson could seek reimbursement from the City for cellular telephone service, but she chooses instead to charge these costs to her campaign.³⁸

27. During the Instant Runoff Voting balloting on November 3, 2009, there were two Democrat-Farmer-Labor candidates, one Green party candidate and one independent seeking election to the City Council from the Fourth Ward. On November 3, 2009, Ms. Johnson won re-election to her fourth term on the Minneapolis City Council.

28. On November 4, 2009, *City Pages* published an article that focused on Ms. Johnson's use of campaign funds for haircuts, dry cleaning and cable television service. Ms. Johnson is quoted in the article as defending these expenditures because she is "campaigning continuously – all the time."³⁹

29. On November 18, 2009, Mr. Kaari filed this campaign complaint with the Office of Administrative Hearings alleging that Ms. Johnson violated Minnesota Statutes § 211B.12 by using money collected by her campaign for non-permitted personal expenditures.

Based upon the foregoing Findings of Fact, the panel makes the following:

CONCLUSIONS

1. Minn. Stat. § 211B.35 authorizes the panel of Administrative Law Judges to consider this matter.

2. Minnesota Statutes Chapter 211A governs the campaign financial reporting requirements for local candidates. "Candidate" is defined to mean "an

³⁶ Ex. 3 (Schedule B, p. 4).

³⁷ Test. of B. Johnson; Ex. 5.

³⁸ Test. of B. Johnson.

³⁹ *City Pages*, Nov. 4, 2009 ("City Council President Barb Johnson Enjoys Perks of Office.")

individual who seeks nomination or election to a county, municipal, school district, or other political subdivision office.”

3. Because the Respondent sought election to a municipal office, she was required to report campaign expenditures and contributions pursuant to the provisions of Minnesota Statutes Chapter 211A.

4. Minn. Stat. § 211A.02 requires candidates who receive contributions or make disbursements of more than \$750 in a calendar year to file financial reports with the appropriate filing officer.⁴⁰ The reports must include the total amount of receipts and expenditures for each time period covered, as well as the name, address, and employer (or occupation if self-employed) of any individual or committee that has made contributions of \$100 or greater during the year.⁴¹

5. As a candidate for municipal office receiving contributions and making disbursements of more than \$750, Ms. Johnson was required to file, and did file, campaign finance reports pursuant to Minnesota Statutes Chapter 211A.

6. As a municipal candidate, Ms. Johnson is not eligible to receive the public subsidies that are offered to candidates for certain state offices under Chapter 10A.⁴² Ms. Johnson’s expenditures were drawn from money that was privately contributed to her campaign committee.

7. Minnesota Statutes § 211B.12 governs campaign expenditures. It provides as follows:

Use of money collected for political purposes is prohibited unless the use is reasonably related to the conduct of election campaigns, or is a noncampaign disbursement as defined in section 10A.01, subdivision 26. The following are permitted expenditures when made for political purposes:

- (1) salaries, wages, and fees;
- (2) communications, mailing, transportation, and travel;
- (3) campaign advertising;
- (4) printing;

⁴⁰ Minn. Stat. § 211A.01, subd. 7, defines “filing officer” to mean the officer authorized by law to accept affidavits of candidacy or nominating petitions for an office or the officer authorized by law to place a ballot question on the ballot.

⁴¹ Minn. Stat. § 211A.02, subd. 2(5).

⁴² See, Minn. Stat. § 10A.25 and 10A.322.

(5) office and other space and necessary equipment, furnishings, and incidental supplies;

(6) charitable contributions of not more than \$100 to any charity annually; and

(7) other expenses, not included in clauses (1) to (6), that are reasonably related to the conduct of election campaigns. In addition, expenditures made for the purpose of providing information to constituents, whether or not related to the conduct of an election, are permitted expenses. Money collected for political purposes and assets of a political committee or political fund may not be converted to personal use.

8. An act is done for “political purposes” when the act is intended or done to “influence, directly or indirectly, voting at a primary or other election.”⁴³

9. Money collected by a candidate’s campaign committee may be used on items and services “reasonably related to the conduct of election campaigns,” but may not be “converted to personal use.”⁴⁴ However, Chapter 211B does not separately define the terms “reasonably related” or “converted to personal use.”

10. Minnesota Statutes Chapter 10A governs the campaign finance and public disclosure requirements for candidates seeking nomination or election as state constitutional officer, legislator or judge.⁴⁵

11. Minnesota Statutes § 10A.01, subd. 26, defines “noncampaign disbursement,” in part, to mean payments by a campaign committee for accounting and legal services, food, beverages, and entertainment for fundraising events and campaign activities, and payment of a candidate’s expenses for serving public office, “*other than for personal uses.*”

12. The prohibition on converting campaign funds to personal use that is found in Chapter 211B was enacted on the same date as the parallel prohibition on such conversion that is found in Minnesota Statutes § 10A.01, subd. 26.⁴⁶

13. The burden of proving the allegations in the complaint is upon the Complainant. The standard of proof for a violation of Minn. Stat. § 211B.12 is a preponderance of the evidence.⁴⁷

⁴³ Minn. Stat. § 211B.01, subd. 6.

⁴⁴ Minn. Stat. § 211B.12(7).

⁴⁵ Minn. Stat. § 10A.01, subd. 10.

⁴⁶ See, 1993 Laws of Minnesota, Chapter 318.

⁴⁷ Minn. Stat. § 211B.32, subd. 4.

14. Under Minn. Stat. § 211B.32, subd. 2, campaign complaints must be filed within one year after the occurrence of the act or failure to act that is the subject of the complaint, except that if the act or failure to act involves fraud, concealment, or misrepresentation that could not be discovered during that one-year period, the complaint may be filed with the OAH within one year after the fraud, concealment, or misrepresentation was discovered.

15. The Complainant failed to establish that the Respondent's expenditures for internet, telephone and cable television service, the Dunkers club membership, the Northside Arts Collective catalogs, food and beverages provided to campaign volunteers, and bartending services provided at fundraising events, violated Minn. Stat. § 211B.12. These expenditures were reasonably related to the conduct of Respondent's 2009 campaign, and the personal benefit conferred upon Ms. Johnson, or her family members, was not so disproportionate as to amount to conversion of these disbursements to personal use.

16. The Complainant did establish that the Respondent's expenditure of campaign funds for an AAA membership was not reasonably related to the conduct of the 2009 campaign, and that the personal benefit conferred upon the Johnsons was so disproportionate as to convert this disbursement to personal use. Mr. Kaari has established a violation of Minn. Stat. § 211B.12.

17. The Complainant did establish that not all of the \$1,449.54 disbursed for hair-styling services and dry-cleaning was reasonably related to the conduct of Respondent's 2009 campaign, and that the personal benefit conferred upon Ms. Johnson was so disproportionate as to convert this disbursement to personal use. Mr. Kaari has established a violation of Minn. Stat. § 211B.12.

Based upon the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

ORDER

IT IS ORDERED:

That having been found to have violated Minn. Stat. § 211B.12, Respondent Barbara Johnson pay a civil penalty of two-hundred dollars by April 10, 2010.⁴⁸

Dated: March 2, 2010

/s/ Eric L. Lipman

ERIC L. LIPMAN
Presiding Administrative Law Judge

/s/ Bruce H. Johnson

BRUCE H. JOHNSON
Administrative Law Judge

/s/ Paul Rieke for

WILLIAM R. JOHNSON
Administrative Law Judge

Reported: Digitally recorded, no transcript prepared.

NOTICE

This is the final decision in this case, as provided in Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

The Complainant, Mr. Kaari, argues that many of the expenditures listed on Ms. Johnson's 2008 and 2009 campaign finance reports were for personal items and services unrelated to the conduct of her 2009 campaign. Kaari disagrees with Ms. Johnson's underlying assumption that members of the City Council are campaigning for

⁴⁸ The check should be made payable to "Treasurer, State of Minnesota" and sent to the Office of Administrative Hearings, P.O. Box 64620, St. Paul MN 55164-0620.

re-election, and making campaign-related expenditures, throughout their terms of office. Mr. Kaari asserts that many of the disbursements made by the Johnson campaign were for items that benefitted Ms. Johnson personally.

In particular, the Complainant contends that Ms. Johnson's expenditures for cellular telephone service, cable television, internet service, dry-cleaning, hair styling, AAA road-side service, and membership in the Dunkers club and Northside Arts Collective were not reasonably related to her 2009 campaign and should not be permitted.

Ms. Johnson makes two key replies: The first is that all of the expenditures made by her campaign were appropriate and for lawful purposes. Secondly, Ms. Johnson argues that any payment made by the campaign prior to November 18, 2008 may not be the subject of a proper Fair Campaign Practices Act complaint.

The panel addresses each of these claims and defenses in turn below.

I. Time to Present Claims of Converting Campaign Funds to Personal Use

Minnesota Statutes § 211B.32 requires that campaign complaints must be filed:

within one year after the occurrence of the act or failure to act that is the subject of the complaint, except that if the act or failure to act involves fraud, concealment, or misrepresentation that could not be discovered during that one-year period, the complaint may be filed with the office [of administrative hearings] within one year after the fraud, concealment, or misrepresentation was discovered.

Ms. Johnson argues that only those campaign expenditures made after November 18, 2008 – one year prior to the filing of the complaint – are properly before the OAH. Any complaint as to a payment made before November 18, 2008, continues Ms. Johnson, is time-barred.

The panel disagrees.

In non-election years, candidates for the Minneapolis City Council are required only to file a single, annual campaign finance report – and this report is due on or before January 31.⁴⁹ Until this reporting was complete, only those with access to the Johnson campaign accounts, and certainly no member of the public, could file a complaint under section 211B.12 claiming that Ms. Johnson had converted campaign funds during 2008.⁵⁰ In the view of the panel, absent some circumstance not present in this record,

⁴⁹ Minn. Stat. § 211A.02, subd. 1.

⁵⁰ Compare, Minn. Stat. § 211B.33, subd. 2 (a) ("If the administrative law judge determines that the complaint does not set forth a prima facie violation of chapter 211A or 211B, the administrative law judge must dismiss the complaint").

the details of Ms. Johnson's campaign expenditures were "concealed" as that term is used in section 211B.36, until the required disclosures were made on February 3, 2009.

Importantly, if Councilwoman Johnson's reading of the statute was the rule, a candidate could convert some or all of her campaign fund to personal uses on January 1, and wait to disclose this conversion until January 31 of the following year; at a time that was after the expiration of the statute of limitations. Such a reading is contrary to the Legislature's clearly stated intention to afford complaining parties one year after the occurrence of acts is "discovered" in order to submit a complaint.

For this reason, all of the expenditures challenged by Mr. Kaari as not reasonably related to the conduct of a campaign shall be considered by the panel.

II. The Applicable Legal Standard for Campaign Disbursements

Through counsel at the evidentiary hearing and in her post-hearing brief, Councilwoman Johnson urged the panel to adopt a reasonableness test for adjudging campaign expenditures under Minn. Stat. § 211B.12. Councilwoman Johnson argues that as to any disputed expenditures, the statute only requires a "logical connection or relatedness between the expenditure and the political purposes of [the] campaign." Concludes Ms. Johnson, "[i]t is enough ... to articulate a rational, legitimate basis for the expenditure to pass this test."⁵¹

The panel disagrees.

In this context, Minn. Stat. § 211B.12 contains two key obligations: Candidates may only expend funds on items that are reasonably related to a "political purpose," as defined in Minn. Stat. § 211A.02, and must not convert campaign resources to personal uses. The argument that Councilwoman Johnson makes in her brief at best conflates these separate obligations into one requirement, or at worst, reads the second obligation entirely out of the statute. Neither approach is availing.

It is important to note that the prohibition on conversion of campaign funds and assets to personal use was amended into section 211B.12 five years after the original enactment date. In the view of the panel, the amendment narrowed the "reasonableness test" found in the 1988 version of the statute and is not mere surplusage.⁵²

⁵¹ *Respondent's Post-Hearing Memorandum*, at 20.

⁵² *Compare*, 1988 Laws of Minnesota, Chapter 578, Article 3, Section 12 with 1993 Laws of Minnesota, Chapter 318, Article 2, Section 48; *see also*, Minn. Stat. § 645.17 (1) and (2) ("In ascertaining the intention of the legislature the courts may be guided by the following presumptions ... the legislature does not intend a result that is absurd, impossible of execution, or unreasonable [and] the legislature intends the entire statute to be effective and certain").

Likewise, the Legislature's choice of the term "conversion" is significant in relaying its intentions. Conversion is a term of art in Minnesota and is defined by the state courts as "the exercise of dominion and control over goods inconsistent with, and in repudiation of, the owner's rights in those goods."⁵³ By choosing this specialized definition,⁵⁴ the Legislature made an important regulatory distinction: It is permissible for candidates, or others, to indirectly benefit from the expenditures made by campaign committees, but the benefits conferred cannot be so large, or so disproportionate to the value received by the campaign, that the committee loses control of its property to the candidate.

The best reading of Minn. Stat. § 211B.12 is that it requires a reasonable relationship between an expenditure of campaign funds and the political purposes of the campaign, and that the benefits derived by any person following the expenditure not be so disproportionate that there is a "conversion to personal use" as a result of the disbursement.⁵⁵

In fact, as a witness during the evidentiary hearing, Councilwoman Johnson described the twin requirements of the statute far better than her later brief. She testified that campaign funds could be properly used to communicate with her constituents and supporters, but could not, for example, finance her travel to Mexico.⁵⁶ We agree. Yet, this result would not follow if the panel only gave effect to the "reasonable relationship" requirement found in the first sentence of the statute.

It is easy to imagine a candidate asserting, in genuine good faith, that engaging in certain foreign travel would contribute to his or her prospects on Election Day. We know this because this question has already presented itself, in a very similar context, to the Campaign Finance and Public Disclosure Board.

In 2006, the Campaign Finance and Public Disclosure Board rendered an advisory opinion on the use of campaign funds by a state legislator for foreign travel. The request for the opinion recited the following facts: The Jewish Community Relations Council planned a trip to Israel and asked several Minnesota legislators to participate in the excursion. The anticipated cost of the journey was approximately \$3,000. During the trip, the participants were scheduled to "learn about Israel's security measures, its battle with terrorism, its relations with the United States and its economic

⁵³ See, *Rudnitski v. Seely*, 452 N.W.2d 664, 668 (Minn. 1990); *Hermann v. Fossum*, 270 N.W.2d 18, 21 (Minn. 1978); *Larson v. Archer-Daniels-Midland Co.*, 32 N.W.2d 649, 650 (Minn. 1948).

⁵⁴ See, Minn. Stat. § 645.17 (4) ("when a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language").

⁵⁵ See, *Day v. Jungbauer*, OAH Docket No. 11-0320-17509-CV (2006) (<http://www.oah.state.mn.us/aljBase/032017509.rt.mbg.htm>) ("The Complainant has established that the Respondent's expenditures on airplane models did violate Minn. Stat. § 211B.12 (7). There was no convincing evidence that the models were originally purchased for a fundraiser, but even if they were, they were not used for that purpose and they were converted to personal use").

⁵⁶ See, Test. of B. Johnson.

ties with Minnesota. Further, participants would be “briefed by government, military and community officials and leaders.”⁵⁷ The Campaign Finance and Public Disclosure Board opined that campaign funds could not be used to underwrite such travel because these expenditures would “not have any specific connection to an election campaign that could bring the cost of the trip within the scope of section 211B.12, clause (7).”⁵⁸

This conclusion is helpful here because, no doubt, a candidate could make a “logical connection” between the candidate’s broader political purposes, and a trip to Israel, Mexico or some other country; but that rule is too permissive under the dual requirement that campaign funds not be converted to personal uses. This panel, the Campaign Finance and Public Disclosure Board, and seemingly Councilwoman Johnson, all agree that an inquiry into the relationship between the expenditure and a political goal is not enough. Minn. Stat. § 211B.12 requires more.

The legislative history confirms this view. The ban on conversion of campaign funds to personal use was added to section 211B following the public outcry over events during the 1993 legislative session – events which included revelations of misuse of state telephone calling cards and travel by legislators to a lobbyist-sponsored event at a winter resort.⁵⁹

The bill that included the ban on a conversion of campaign funds was part of a larger, comprehensive package on ethics reform.⁶⁰ This ethics reform package followed after more than forty hours of testimony and deliberations by the Senate Ethics and Campaign Reform Committee.⁶¹ When approving these reforms, legislative leaders of both parties pointed to the fact that far-ranging campaign finance reform was very much on the public’s mind in 1993.⁶²

Moreover, the Legislature simultaneously revised both section 211B.12 and section 10A.01 (26) (10), to establish a broad and interlocking set of prohibitions on the conversion of campaign funds to personal use. Statutes are *in pari materia* if they relate to the same person or thing or have a common purpose. Here, because the provisions

⁵⁷ See, Advisory Opinion 390, slip op. at 1 (Campaign Finance and Public Disclosure Board, 2006) (<http://www.cfboard.state.mn.us/ao/AO390.pdf>).

⁵⁸ *Id.*, at 2.

⁵⁹ See generally, C. Allen and M. Linsky, *Managing in a Crisis: Dee Long’s Tumultuous Year*, at 3-9 (State Legislative Leaders Foundation, 1994) (<http://www.sllf.org/media/file/20.4.pdf>).

⁶⁰ See, Conference Committee Report on House File 163 (1993); House File 201 (1993); 1993 Senate Journal 5530 - 5552.

⁶¹ *Remarks of Senator Dean Elton Johnson*, Senate 78th Session, Day 39, April 20, 1993 – Tape 2.

⁶² *Id.*; *Remarks of Senator Douglas Johnson*, Senate 78th Session, Day 39, April 20, 1993 – Tape 2 (“Things have changed and I think that the public in Minnesota has become more aware; that we have to change the way that we finance campaigns in Minnesota. As I have studied our system and read and followed it, I think that is what this bill is all about and the components of it...”); *compare generally*, Line Item Veto Message of Governor Carlson (May 20, 1993) (“Despite its shortcomings, this bill represents the beginning of campaign reform”) (http://www.leg.state.mn.us/archive/veto/1993veto_ch318.pdf).

of sections 10A.01 (26) (10) and 211B.12 were enacted as part of the same bill, the panel construes these provisions together, so as to effectuate legislative intent, purpose, and policy.⁶³ Individually, and in combination, these amendments were intended to narrow the range of items for which campaign funds could be utilized.⁶⁴

With that said, when resolving complaints under section 211B.12 the Office of Administrative Hearings does not sit as a super-campaign consultant. Absent allegations of self-dealing or sham transactions, Chapter 211B does not authorize this tribunal to second-guess the wisdom of particular campaign expenditures or to assess the value received from transactions made during the course of a campaign for public office. Accordingly, whether re-printing copies of the Northside Arts Collection catalog, for example, is a useful campaign technique, is a matter that the statute and the constitution commit entirely to the candidate and the campaign committee.

The sole question for the panel in this matter is whether the personal benefits derived by Ms. Johnson, and members of her family, following certain expenditures was so disproportionate that the committee's funds were converted to personal use.

III. Specific Expenditures of the Johnson Campaign

Ms. Johnson contends that every disbursement of campaign funds in 2008 and 2009 was reasonably related to influencing the balloting in the 2009 election, and therefore was lawful and proper.

A. Telephone Expenses

Ms. Johnson asserts that the campaign purpose underlying her cellular and "land-line" telephone charges was to permit her to remain in close contact with her constituents on matters of public concern and her supporters on the progress of the campaign. Upon a review of the hearing record, the panel concludes that there is a reasonable relationship between these expenditures, and the political purposes of the campaign, and that the benefits derived by Ms. Johnson from these disbursements was not so disproportionate that there was a conversion of campaign funds to personal use.

B. Internet Expenses

Ms. Johnson asserts that the campaign purpose underlying the internet service provided both to her north Minneapolis home and to her cabin in Tower, Minnesota, was to permit her to remain in close contact with constituents and supporters by electronic mail. Upon a review of the hearing record, the panel concludes that there is a reasonable relationship between these expenditures, and the political purposes of the

⁶³ See, *State v. McKown*, 475 N.W.2d 63, 65 (Minn. 1991); *Apple Valley Red-E-Mix, Inc. v. State Dep't. of Public Safety*, 352 N.W.2d 402, 404 (Minn. 1984).

⁶⁴ See, 1993 Laws of Minnesota, Chapter 318, Article 2, Sections 3 and 48.

campaign, and that the benefits derived by Ms. Johnson from these disbursements was not so disproportionate that there was a conversion of campaign funds to personal use.

C. Cable Television Expenses

Ms. Johnson asserts that the campaign purpose underlying the expenditures for cable television service was to permit her to monitor from home proceedings of other public bodies. Upon a review of the hearing record, the panel concludes that there is a reasonable relationship between these expenditures, and the political purposes of the campaign, and that the benefits derived by Ms. Johnson from these disbursements was not so disproportionate that there was a conversion of campaign funds to personal use.

D. Food and Beverage Service Expenses

The Respondent also maintains that the \$1,100 campaign expenditure to reimburse Ms. Johnson for the cost of food and beverages paid to campaign supporters and volunteers is reasonably related to the conduct of the election campaign. Likewise, the payment of \$500 to her son-in-law, Mr. Piper, for purchasing beverages and bartending at fundraising events was campaign-related and therefore permitted.

Upon a review of the hearing record, the panel concludes that there is a reasonable relationship between these expenditures, and the political purposes of the campaign, and that the benefits derived by either Ms. Johnson or Mr. Piper from these disbursements was not so disproportionate that there was a conversion of campaign funds to personal use.

E. Dunkers Club Membership

Ms. Johnson contends that the \$300 expenditure for membership in the Twin Cities Dunkers club was reasonably related to the valid campaign purpose of maintaining regular communications with leaders in the Twin Cities business and nonprofit community.

Upon a review of the hearing record, the panel concludes that there is a reasonable relationship between this expenditure, and the political purposes of the campaign, and that the benefits derived by Ms. Johnson from this disbursement was not so disproportionate that there was a conversion of campaign funds to personal use.

F. Advertising and Catalogue Printing Expenses

Ms. Johnson asserts that the \$376 expenditure for placement of an advertisement in the Northside Arts Collective catalogue, and printing copies of the catalogue for later distribution to DFL convention delegates, was proper.

Upon a review of the hearing record, the panel concludes that there is a reasonable relationship between this expenditure, and the political purposes of the

campaign, and that the benefits derived by Ms. Johnson from this disbursement was not so disproportionate that there was a conversion of campaign funds to personal use.

G. AAA Membership Expenses

Ms. Johnson argues that the expenditures for an AAA membership, including roadside assistance for both her primary vehicle and her husband's SUV, was an appropriate campaign expense. She maintains that her car and her husband's car are used for campaign purposes, throughout the city, at all hours of the day. Ms. Johnson testified that her husband's SUV was used for hauling lawn signs, coolers, tables and chairs for various campaign events. She contends that the ability to get roadside assistance for vehicles used for campaign purposes, served a valid and permissible campaign purpose.

Upon a review of the hearing record, the panel concludes that there is not a reasonable relationship between these expenditures, and the political purposes of the campaign, and that the benefits derived by Mr. and Mrs. Johnson from these disbursements was so disproportionate that there was a conversion of campaign funds to personal uses.

H. Hair Styling and Dry-Cleaning Expenses

Ms. Johnson argues that the expenditures on hair styling and dry-cleaning services were related to improving her appearance at public events and addressing the critiques she had suffered on this point in the local media.

Upon a review of the hearing record, the panel concludes that there is not a reasonable relationship between all of these expenditures, and the political purposes of the campaign, and that in many instances the benefits derived by Ms. Johnson from these disbursements was so disproportionate that there was a conversion of campaign funds to personal uses.

In this context it is important to emphasize that there is a single legal standard that applies to all candidates – regardless of the candidate's gender.

At the evidentiary hearing there was considerable testimony as to whether female candidates for public office, like Ms. Johnson, are held to different (and more rigorous) standards of appearance by members of the voting public; thereby obliging different types of expenditures from the campaign committees of female candidates.⁶⁵ While there is much to commend this view, as well as evidence that male candidates can likewise be subject to withering critiques of their attire and grooming,⁶⁶ the panel

⁶⁵ See, e.g., Testimony of Sarah Janecek.

⁶⁶ Compare, e.g., *Extreme makeover, Iowa style*, Star Tribune (October 28, 2007) (<http://www.startribune.com/politics/11761271.html>); *Style becomes a real issue in '08 presidential race*, USA Today (October 14, 2007) (http://www.usatoday.com/life/lifestyle/fashion/2007-10-14-campaign-fashion_N.htm).

need not resolve this debate in order to render a decision in this case. It suffices to say that if a candidate for office in Minnesota, whether male or female, has a legitimate need to purchase items or services related to the candidate's appearance at a campaign function, the nature, rationale and amount of these expenses should be thoroughly documented and disclosed with the required reports. Such disclosures contribute to the purposes of the reporting statute, as well as focus both candidates and the general public on the prohibition against using campaign funds to defray wholly personal expenses.

Moreover, the record in this case shows precisely how such a rule can, and does, work in practice. Undoubtedly, the reimbursement for the dry cleaning expenses incurred following the soiling of Ms. Johnson's blouse at a campaign event was reasonable, proper and easily documented. The need to restore one garment does not, however, authorize reimbursement of a candidate's dry cleaning expenses more generally.

V. Conclusion

The panel concludes that there is not a sufficient nexus between the 2008 and 2009 campaign expenditures for hair styling, dry-cleaning services and the AAA membership and Ms. Johnson's 2009 re-election campaign. The Complainant, Mr. Kaari, has established by a preponderance of the evidence that these expenditures violated Minn. Stat. § 211B.12.

Having found that the Respondent violated Minn. Stat. § 211B.12 (7) with respect to certain campaign expenditures, the Panel may make one of several dispositions: The panel may issue a reprimand, may impose a civil penalty of up to \$5,000, and may refer the complaint to the appropriate county attorney for criminal prosecution.⁶⁷

The panel imposes a civil penalty of \$200. In reaching this disposition, the facts that the impact of the violation upon voters in Minneapolis was small and that the case law to date has provided little instruction to candidates on section 211B.12, both urge the imposition of a modest sanction.

E. L. L., B.H.J., W.R.J.

⁶⁷ Minn. Stat. § 211B.35, subd. 2.